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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirtieth session

SUMMARY RECORD OF THE 541st MEETING

Held at Headquarters, New York,
on Wednesday, 27 March 1991, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.35 a.m.

GENERAL DEBATE (continued)

1. Mr. MOTSYK (Ukrainian Soviet Socialist Republic) said that the thirtieth session of the Legal Subcommittee coincided with the thirtieth anniversary of the first manned space flight, which had ushered in a new era in the development of mankind. The commemoration of International Space Year in 1992 should promote the utilization of outer space for exclusively peaceful purposes and for the benefit of current and future generations. Likewise, the events which would be organized as part of the Year should strengthen cooperation in outer space and encourage the adoption of a humanistic approach to the question of the uses of outer space.

2. Ukrainian scientists and experts were preparing to make a contribution to the activities of the Year. A number of events would be organized by Intercosmos with the participation of Ukrainian scientific institutes, including an international symposium, to be held at Dniepropetrovsk in 1992, on questions relating to the influence of solar processes on the Earth's environment and on man. Plans had also been made for a conference to be held at Kiev, entitled "Outer space and the global problems of mankind on the threshold of the twenty-first century", and for work to be conducted there on the topic "Theory and applications of the biological role of gravitation".

3. As shown by the report on the work of its twenty-ninth session (A/AC.105/457), the Subcommittee had made substantial progress. In particular, it was not far from completing the elaboration of a set of draft principles relevant to the use of nuclear-power sources in space. A genuine breakthrough had occurred at the previous session, when an agreement had been reached on safety criteria for space activities of that kind. His delegation had joined the consensus on the text of draft principle 3 concerning guidelines and criteria for safe use. A successful outcome of the work on the draft principles could be expected very shortly.

4. At the previous session, agenda item 5 had given rise to an interesting exchange of views and ideas; while the debate had been contradictory and even heated at times, it had also provided food for thought. That was, his delegation hoped, the beginning of a constructive process which would ultimately make a new and concrete contribution to the progressive development of international space law, especially since that question was directly related to the utilization of outer space for exclusively peaceful purposes.

5. With regard to agenda item 4, the Ukrainian SSR believed that there should be a clear legal distinction between airspace, which was governed by a regime based on the principles of State sovereignty, territorial integrity and national security, and outer space, which was open to free exploration and use by all countries. If there was no immediate success in defining a boundary between outer space and airspace, efforts could be made to reach agreement on

(Mr. Motsyk, Ukrainian SSR)

the meaning of the term "outer space" and, at the same time, on recognition of the right of innocent passage by the space objects of all States over the territory of another State in the course of their reaching orbit and returning to Earth, provided that such overflight did not entail harmful consequences for the territory of the State which was the owner of the airspace. His country believed that such an approach was best, but it was prepared to consider other points of view or proposals.

6. To the extent that the question of delimitation was closely related to that of elaborating a legal regime applicable to aerospace vehicles, the importance of his delegation's proposal that the Subcommittee should decide to consider the latter question should be recognized.

7. Lastly, the Ukrainian SSR reaffirmed its belief that space activities should have a legal basis, and would endeavour, to the full extent of its resources, to promote the elaboration and strengthening of legal norms in that area.

8. Mr. HE Qizhi (China) welcomed the progress made with regard to the draft principles relevant to the use of nuclear-power sources in outer space. The consensus reached at the twenty-ninth session of the Subcommittee on principle 3 (Guidelines and criteria for safe use), which was the key draft principle, had created favourable conditions for finalizing the draft as a whole. The text of that principle was well-structured and had a sound scientific basis.

9. With regard to the proposal by some delegations that draft principles 2 (Notification of the presence on board a space object of a nuclear-power source) and 4 (Safety assessment) should be considered together, his delegation felt that, while the two principles differed in content, they were related to some extent. It hoped that there could be further consultations on that issue at the current session so that it could be resolved in a manner acceptable to all.

10. The question of defining "launching State" was complicated, as it was possible that the State from whose territory the launch occurred might not be the State which had manufactured or which owned the satellite, so that it could not, from a technical point of view, conduct a safety assessment or provide relevant information. Under those circumstances, one possible solution would be to specify, on the basis of the current text, the role and functions of the launching State in accordance with the specific conditions of each principle.

11. Once adopted, the draft principles, together with the Convention on Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear Accident or Radiological Emergency, concluded in 1986 after the Chernobyl nuclear accident, would form an integral system to ensure the safe use of nuclear-power sources. It was to be hoped that, at the current session, the

(Mr. He Qizhi, China)

Subcommittee would make every effort to reach a consensus on the set of draft legal principles.

12. In view of the complicated political, technical and other issues which the definition and delimitation of outer space entailed, and the need for further studies concerning the upper atmosphere, it would be better not to take a hasty decision on that subject.

13. In his view, the question of the geostationary orbit did fall within the competence of the Committee on the Peaceful Uses of Outer Space and the Subcommittee; those bodies had the right, according to the relevant General Assembly resolutions, to consider matters of principle relating to the use of the orbit. The functions of the Outer Space Committee, its Subcommittee and the International Telecommunication Union (ITU) were complementary in that regard; the first two bodies focused on the development of general legal regimes, while ITU was concerned with technical rules and procedures.

14. The Working Group on agenda item 5 could begin with a study and discussion of national legislation and regulations and the provisions of international, regional and bilateral treaties relating to the common benefit principle embodied in article I of the 1967 Outer Space Treaty; in that way, the outstanding issues could be identified and solutions could be found with a view to establishing a legal regime to ensure the implementation of that principle. Intensive discussions and consultations, in which his delegation would take an active part, would be necessary in order to reconcile divergent views.

15. Mr. REY (Colombia) said that as long as there were two distinct legal systems applying to airspace and to outer space respectively, the two spaces needed to be delimited. It was important for the Legal Subcommittee to spare no effort to reach agreement on the matter. His delegation supported the Soviet delegation's proposal that the Subcommittee should consider establishing a legal system applicable to aircraft and spacecraft both. So much technical and scientific progress had been made in that area that international regulation was essential. The Legal Subcommittee should also study matters relating to the control of the use of outer space for military purposes. The potential role of the Subcommittee in that matter and the activities of the Conference on Disarmament were not mutually exclusive. Moreover, the very raison d'être of the plenary Committee was to ensure the peaceful use of outer space. His delegation supported the proposal put forward by the Argentine delegation for the establishment of regulations on space debris, which it deemed necessary in view of the danger of congestion of the geostationary orbit and of the dangers posed by the presence of such debris in outer space and by its re-entry.

16. His delegation remained very interested in everything relating to the geostationary orbit and wished to emphasize once again how important it was to establish a sui generis legal system so as to avoid irrational and unfair use

(Mr. Rey, Colombia)

of the geostationary orbit, to prevent it from becoming congested, to ward off any threat to humankind's environment or safety, and to enable developing countries to make use of it. The reports made to the Scientific and Technical Subcommittee at its twenty-eighth session by the world's most important space research centres confirmed the importance of the geostationary orbit for the economic, social and cultural development of peoples. It was essential, therefore, to proceed with the analysis of that issue. His delegation, for its part, planned to submit a few new elements that in its opinion might serve as a basis for fruitful negotiations in the very near future, to the extent that they were received in the same spirit as they were intended, one of understanding.

17. In regard to agenda item 5, coordination should be emphasized so that legal principles could be established to regulate international trade in goods and services arising from space activities, though such principles must take into account the special international arrangements governing certain questions that existed already.

18. Mr. RASHKOW (United States of America) said that he endorsed the views expressed at the preceding meeting by the representative of France on the subject of a review, which had been suggested by certain delegations, of the question of the prevention of an arms race in space by the Committee on the Peaceful Uses of Outer Space and its Subcommittees. Not they, but the Conference on Disarmament, had jurisdiction in the matter. The task of the Committee and its Subcommittees was to promote international cooperation on the peaceful uses of outer space and it was important that it should not be distracted from that task by questions that were within the jurisdiction of other bodies.

19. On the concerns expressed by a number of delegations regarding space debris, his delegation, while recognizing that that was an extremely important and complex question and one that the Subcommittee should deal with at a later date, thought that it was still too soon for the item to be placed on its agenda. Various national and international organizations were at that time carrying out important research into the matter. For its part, the United States was cooperating with other countries on the study of space debris and the results of that research would be made available to other countries. His Government would continue to consult with other Governments with a view to determining which areas might give rise to cooperation or debate at the world level.

20. Mr. KHABIROV (Union of Soviet Socialist Republics) said he had thought, during the previous meeting, that the question raised by the representative of France, namely the jurisdiction of the Subcommittee in questions relating to the demilitarization of space, had been exhausted. It now appeared, following the statement of the United States representative, that such was not the case. His delegation reserved the right, accordingly, to set out its views on the point at issue, which it considered fundamental.

21. Mr. BOYER (France) noted that France had been studying the matter of space debris together with its European Space Agency partners. The time would soon come when the matter could be considered in specific terms, but as yet it required more in-depth study.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (continued)

22. Mr. SCHAFER (Germany) said that the Committee on the Peaceful Uses of Outer Space, and in particular its Legal Subcommittee, had been discussing the question of the delimitation of airspace from outer space since the very beginning of the space age. For want of a solid basis for defining the pertinent criteria, it had not been possible thus far to reach agreement on such a delimitation. It seemed, however, that no harm had come to mankind on that account, and in the light of the great successes of space flight it appeared debatable whether such a delimitation was necessary at all. His delegation was convinced that any premature delimitation of airspace and outer space could even hinder the future development of space technology and, by extension, of space flight.

23. For the same reasons, his delegation favoured a cautious approach to any attempt to modify the corresponding agenda item. The Soviet delegation had proposed that matters relating to "aerospace vehicles" should be dealt with under the item. His delegation did not a priori preclude the possibility that, after reviewing the document to be submitted by the Soviet Union, the Legal Subcommittee might come to the conclusion that it could usefully pursue that line of inquiry. It did not see, however, any pressing need to modify the wording of the item by a consensus decision during the current session. Any decision by the Legal Subcommittee to modify the item should be preceded by a thorough review of its substance and implications, a review that would, of course, have to include the examination of any paper to be submitted by the Soviet delegation.

24. On the question of the geostationary orbit, any legal discussion must start from the indisputable fact that that orbit was part of outer space. Its use was therefore subject to the provisions of article 2 of the 1967 Outer Space Treaty, under whose terms outer space, including the Moon and other celestial bodies, was not subject to national appropriation. Therefore, any national claim to ownership of the geostationary orbit was precluded by international space law. It was of paramount importance for the Legal Subcommittee, in its subsequent discussion of the matter, not to cast doubt on the fact that the geostationary orbit was legally subject to the 1967 Outer Space Treaty.

(Mr. Boyer, France)

25. It was a legitimate concern to ensure that all States had equal opportunities to use the geostationary orbit. His delegation wished to emphasize that the appropriate forum for discussing that question continued to be ITU. On the basis of article 33, paragraph 2, of the International Telecommunication Convention, ITU had worked out basic means and procedures to ensure that each country had equal access to the geostationary orbit. At the World Administrative Radio Conferences of 1985 and 1988, methods had been worked out which guaranteed equitable access in practice. His delegation had always pointed out that no State was granted preferential treatment by the ITU Convention. Because of the useful and effective work carried out by ITU, he saw no need for the Subcommittee to duplicate its work, a task for which in fact it had no mandate.

26. From a general point of view, the nature of the geostationary orbit as a limited resource should no longer dominate discussions. Owing to the progress of space technology, such scarcity would be less of a problem in the future than had been anticipated. It was safe to assume that the problem would soon be superseded by the threat posed by space debris to the usability of the orbit.

27. Mr. MOTSYK (Ukrainian Soviet Socialist Republic) said that his delegation attached special importance to the issue of the delimitation of airspace and outer space and believed that it was high time for it to be resolved from the standpoint of international law. It was regrettable that the consideration of that highly complicated question had dragged on for more than 20 years.

28. His delegation had made a careful study of the documents on that subject which had been before the Subcommittee at its previous session, and had had the impression that those supporting the idea of delimitation were more numerous than those opposing it. In addition, in its view, the arguments advanced by the States which supported the idea of delimitation were more convincing. They were based on the fact that there were two separate legal regimes, one governing airspace and the other governing outer space. The first regime, which had been given a specific definition in contemporary international law, was based on the principles of sovereignty, territorial integrity and national security. The second one was based on the principle of the free exploration and use of outer space. That regime was embodied in the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which provided that outer space was part of the common heritage of mankind and that no State could appropriate it or claim any form of sovereignty over it. An additional argument in favour of defining the boundary of outer space stemmed from the emergence of new aerospace transport systems. Lastly, such delimitation was also necessary in order to ensure strict observance of the many agreements in which the legal status of outer space was a relevant issue. Accordingly, there were both practical and legal requirements for the definition and delimitation of outer space. What was needed currently was for States to display a sincere political will to move

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forward in that direction. Naturally, the space objects of States should retain the right of innocent passage through the airspace of other States, either in order to reach orbit or to return to Earth.

29. His delegation also believed that it was important for the Subcommittee to decide to consider under item 4 of its current agenda the questions of international law relating to the use of aerospace vehicles at certain altitudes. That would clarify the substance of the issues relating to the delimitation of outer space and to the elaboration of norms concerning the right of innocent passage of the aerospace vehicles of States over the airspace of other States. He hoped that an initial exchange of views could take place at the current session on the questions of international law concerning the use of aerospace vehicles.

30. With regard to the second part of agenda item 4, his delegation was inclined to side with those delegations which believed that the geostationary orbit formed an integral part of outer space. Like any other part of outer space, the orbit was not subject to national appropriation by claim of sovereignty or by any other means. The geostationary orbit was a limited natural resource, to which all States had the right of equitable access, in accordance with article 33 of the 1982 International Telecommunication Convention.

31. Mr. MEHRA (India) said that his delegation, while mindful of the potential contribution which space science and technology could make to the development of mankind, was equally aware of the risk which they represented from the point of view of the arms race and the militarization of outer space, and accordingly considered it to be in the interest of all States to agree on an internationally acceptable and legally binding definition of outer space and to establish an equitable regime for the use of the geostationary orbit.

32. A legal definition of outer space, clearly demarcating it from airspace, was necessary for several reasons. First, the legal regimes applicable to airspace and outer space were not only different but incompatible in some areas. Furthermore, a clear definition of outer space would facilitate the adoption of measures to prevent the militarization of outer space. Lastly, the development of new aerospace transport systems capable of being used in both airspace and outer space made it even more urgent for the Subcommittee to work out such a definition. Moreover, the definition would make it possible to ensure compatibility between the new instruments and arrangements which were being worked out and the 1967 Outer Space Treaty.

33. In approaching the issue, it was essential for the international community to show political will and a spirit of compromise and cooperation. His delegation remained open to any constructive suggestion on the issue of applicable criteria. In that context, it felt that careful consideration must be given to any proposal to examine specific functional aspects of space activities, such as the use of aerospace systems.

(Mr. Mehra, India)

34. His delegation viewed the geostationary orbit as a limited natural resource, forming an integral part of outer space, over which no State or group of States could have any sovereignty or other special authority. Its immense usefulness for telecommunications could not be overstated, and the developing countries had been disadvantaged with regard to its use, owing to lack of capital and technology. That unfortunate situation must be corrected by ensuring the equitable access of all States to the geostationary orbit, and its rational use, especially for the benefit of the developing countries, including the equatorial countries. His delegation was also of the view that the functional role of ITU in no way detracted from the paramount responsibility of the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee to handle political and legal issues pertaining to the geostationary orbit.

35. Mr. SOETJIPTO (Indonesia) said that, as a member of the Outer Space Committee since its inception, his country had always considered the Subcommittee to be the single multilateral forum through which Member States could accomplish the task of codifying legal norms concerning outer space and the related activities of all countries, taking into account the special needs and interests of the developing countries.

36. With regard to the definition and delimitation of outer space, there were two opposing views: some countries believed that there was no need at present to establish a boundary between airspace and outer space, while other countries, including his own, stressed the need for such delimitation. It seemed unlikely that the controversy could be resolved in the near future. Notwithstanding those differences, it was essential to stress that the establishment of a precise legal framework, as called for by the General Assembly, should be consistent with the basic principles of international law as well as equity. His delegation emphasized its firm conviction that any definition and delimitation of outer space must necessarily include the establishment of a sui generis legal regime for the geostationary orbit. Any attempt to exclude such a regime would be unacceptable to his country. His delegation would therefore oppose any initiatives to separate the issue of the definition of outer space from the issue of the geostationary orbit.

37. His delegation attached special importance to the question of the character and utilization of the geostationary orbit, and Member States had recognized the need for rationality and equity to be the guiding principles in planning the utilization of that unique and limited natural resource. However, the current first-come-first-served practice of appropriation of certain segments of the orbit was totally inequitable. Those conclusions had been confirmed by the report of UNISPACE 82 and article 33 of the ITU Convention.

38. The scientific and technological applications derived from the use of the geostationary orbit were of fundamental importance to the advancement of the national development goals of Indonesia, which, as a developing and equatorial

(Mr. Soetjipto, Indonesia)

country, viewed the matter with great concern. As currently utilized, the geostationary orbit was liable to become rapidly saturated, to the detriment of the developing countries, which had not yet acquired the technology and resources necessary to enter the race. The ITU technical regulations would not be sufficient to deal with the problem, and it was therefore urgent to establish a sui generis legal regime which would guarantee the interests of all developing countries and grant preferential rights to the equatorial countries.

39. Without a legal regime, confusion and conflict in the future would be difficult to avoid, and an unacceptable situation would develop in which only those States possessing advanced technology and the requisite financial resources would be able to take advantage of the geostationary orbit, so that they would dominate outer space as a whole. Accordingly, his delegation believed that the Subcommittee had an indispensable role to play with regard to the establishment of a sui generis legal regime. The Subcommittee's work should be based on the working paper submitted in 1984 by Ecuador, Colombia, Kenya and Indonesia (A/AC.105/C.2/L.147) and on the "working non-paper" submitted by the non-aligned countries. In his delegation's view, those two documents established a balance which could serve the interests of all States, especially the equatorial countries.

40. Mr. RASHKOW (United States of America) said that he wished to reaffirm the long-standing view of his delegation that there was little likelihood of the consideration of the question of the definition of outer space, producing tangible results, and that the Subcommittee should consider dropping the item from its agenda, or at least significantly reducing the time allotted to it. In that regard, he associated himself with the views expressed by the representative of Germany.

41. With regard to the proposal made by the representative of the Soviet Union that the Subcommittee should undertake the elaboration of principles relating to the use of aerospace systems, subject to a consensus among its members that such a step would be useful, his delegation associated itself with the views expressed by the representatives of Germany and France, who had suggested that it was difficult to agree to such a proposal without a specific knowledge of what it involved. Before beginning a preliminary exchange of views on such principles, it would be advisable to have an explanation of the problems connected with the flights of aerospace systems, as referred to by the Soviet delegation and other members of the Subcommittee. Their views could be presented in a working paper, in statements to the Subcommittee, or within the Working Group established under that item.

42. With regard to the likelihood of tangible results being produced by the consideration of the character and utilization of the geostationary orbit, the United States delegation had doubts similar to those which it had expressed earlier with regard to the definition and delimitation of outer space. It looked forward with interest to the proposals and comments which would be submitted on that subject during the current session.

43. Mr. OBAKPOLOR (Nigeria) said that the questions of the definition and delimitation of outer space and of the character and utilization of the geostationary orbit were of interest to many countries which were concerned at the type of activities undertaken by some spy satellites and military-oriented spacecraft.

44. His delegation believed that the definition and delimitation of outer space was both a practical and a legal necessity. Definition and delimitation would enable a clear distinction to be made between airspace and outer space. His country had proposed, as a compromise, limiting airspace to 90 kilometres above the Earth. Other Member States had proposed that the boundary should be fixed at 110 kilometres, which was equally acceptable. However, the issue must be tackled decisively.

45. While some delegations believed that there was no need to establish a boundary between airspace and outer space, it was necessary to be realistic and to recognize that, since the entry into force of the 1967 Outer Space Treaty, enormous technological advances had been made, and that those new realities should be taken into account. His delegation was therefore of the view that the item on the definition and delimitation of outer space should be retained on the agenda and given continued consideration because of its implications for the territorial integrity of States.

46. Nigeria had adhered to the Outer Space Treaty in November 1967, in the firm belief that outer space, the celestial bodies and the geostationary orbit would remain the common heritage of all mankind, to be equitably explored and rationally used for the benefit of all countries, and not to be subjected to claims of sovereignty or priority by any nation. The Outer Space Treaty was thus, in his delegation's view, an important legal and political document.

47. The geostationary orbit, which was a limited natural resource, was in danger of saturation as a result of the large number of satellites placed therein by certain countries, whereas it should be utilized effectively, equitably and economically in the interests of all mankind, taking into account the needs of the developing countries. Accordingly, his delegation called for the establishment of a sui generis legal regime to regulate equitable access by all countries to the geostationary orbit and to ensure its rational use. Nigeria believed that ITU had a useful role to play in managing and regulating the technical issues within its competence, but that the Subcommittee and the Committee on the Peaceful Uses of Outer Space were the bodies competent to deal with political and legal questions relating to the geostationary orbit. It also believed that, as delegations expressed general views on the issue, a workable formula would emerge which would make it possible to focus greater attention on the question of the definition and delimitation of outer space so that a legal regime could be established to guarantee the sovereignty and security of all States, especially the vulnerable non-space-faring countries.

48. Mr. KHABIROV (Union of Soviet Socialist Republics) said that he saw no reason why a decision on his delegation's proposal concerning aerospace vehicles could be taken only after the submission of a draft by the Soviet Union. Nothing of the kind had ever been required before. The question of nuclear-power sources, for example, had been on the agenda before any specific proposal had been made. The idea had simply been put forward and discussed within the Subcommittee. The same was true of other agenda items.

49. In reply to the representative of Germany, he wished to state that his delegation had no intention of changing the wording of agenda item 4, which would be the prerogative of the General Assembly. The Soviet Union merely proposed that the legal issues of aerospace vehicles should be considered under that item. It seemed to him that, unfortunately, the idea was not supported by all members of the Subcommittee. Nevertheless, the time had come to deal with the question, which would have to be settled sooner or later.

50. Mr. PERRI (Brazil) said that it was imperative for States to know with certainty the physical scope of the treaties and agreements relating to airspace and outer space, respectively. The delimitation of those spaces was, therefore, absolutely necessary. Unfortunately, some space Powers which were members of the Subcommittee were opposed to that, because they did not wish their efforts to be impeded by regulations which would impose on them new obligations towards other States. Nevertheless, it was important to engage in collective work within the Subcommittee with a view to establishing a legal regime which took into account the interests of all; without such a regime, the will of those who possessed the requisite technology would prevail. The Soviet proposal was very attractive, because it would at least make it possible - as the question of delimitation could not be considered at the current stage, owing to the opposition of some States - to study aerospace systems and their functioning in the atmosphere, in airspace and in outer space, and thus to give a new momentum to the work of the Subcommittee which could eventually lead to a resolution of the issue of delimitation.

PARTICIPATION OF NON-MEMBER STATES

51. The CHAIRMAN, after informing the members of the Subcommittee that Cuba had requested to participate in its work, suggested that, while the granting of observer status was a prerogative of the Outer Space Committee, the Subcommittee should authorize the representative of Cuba to attend its formal meetings and to address to the Chairman a request for the floor if he wished to make a statement.

52. It was so decided.

The meeting rose at 12.15 p.m.